

REMARKS

The claims have been amended to clarify the patentable invention with better language. New claims 11-14 have also been added.

In the Office Action the claims have been rejected in view of the Peppard reference under section 102(e). Applicant traverses this rejection over the substance of the rejection and the characterization of what Peppard discloses as set forth in the Office Action. Peppard discloses five embodiments of a handlebar throttle controller. The first four embodiments disclose a Hall sensor 48 that senses the angular position of the magnet 50. The spring 44 undergoes compression when the handle is rotated and as the cam member 30 axially slides in the handle to provide resistance. However, the magnet only undergoes rotation and no axial linear motion. The second through fourth embodiments also provide for a magnet that only rotates but has no linear motion.

The fifth embodiment shown in figure 10 provides for only linear rotation of the magnet 128 with respect to the linear position sensor 122. It is noted that in Col. 7, lines 13, the sensor 122 only detects axial movement of the cam. No rotation is involved and rotation cannot be sensed.

It appears that the Office Action is combining these different embodiments to provide both rotation and linear motion. But the Peppard reference teaches away from such a combination and is limited to a choice. One can have a linear

sensor or a rotational sensor but Peppard does not teach nor disclose a device where the magnet can rotate in one direction from a zero set position i.e. the predetermined angular position and linearly move when the shaft rotates in an opposite direction from the set zero i.e. predetermined angular position.

Claim 1, specifically calls for a magnet that both rotates and translates with respect to the first member. Such a limitation is clearly absent from the Peppard reference.

It is axiomatic that, in order to "anticipate" a claim, "all the elements in the claim (or possibly their equivalents...) must have been disclosed in a single prior art reference or device." *Radio Steel & Mfg. Co. v. MTD Products, Inc.*, 731 F.2d 840, 845, 221 U.S.P.Q. 657, 661 (Fed. Cir. 1984). Moreover, "it is incumbent upon the Examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference." *Ex parte Levy*, 17 U.S.P.Q. 2d 1461, 1462 (BPAI 1990). It is respectfully submitted that the cited reference patent does not disclose or suggest all the elements of claim 1 as filed or amended, nor has the Examiner identified wherein in this cited patent it allegedly teaches "each and every facet" of the invention as claimed.

As further set forth in M.P.E.P. § 2131 (pgs. 2100-67):

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q. 2d 1051, 1053 (Fed. Cir. 1987). . . . "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q. 2d 1566 (Fed. Cir. 1990).

As further pointed out in M.P.E.P. § 706.02 (pgs.

700-23).

"The distinction between rejections based on 35 U.S.C. 102 and those based on 35 U.S.C. 103 should be kept in mind. Under the former, the claim is anticipated by the reference. No question of obviousness is present. In other words, for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present. Whereas, in a rejection based on 35 U.S.C. 103, the reference teachings must somehow be modified in order to meet the claims. The modification must be one, which would have been obvious to one of ordinary skill in the art at the time the invention was made."

As such, it is now believed that claim 1 as now amended is allowable over the cited reference.

Claim 2, 3, and 4, being dependent on claim 1 are

believed allowable for the same reasons set forth above. Furthermore, claim 2 calls for the Hall sensor effect being increased with rotation of the second member and magnet in the first direction and the magnet flux density being decreased responsive to translation of the second member and magnet with respect to the first member as the second member moves from the predetermined angular position. As such, claim 2 is believed allowable for this additional reason.

Claim 3 further calls for a cam that provides for a cam and cam follower where the cam follower engages the cam and translates one of the first and second members relative to the other and the magnet in one direction and not in the other direction. At best the Peppard reference shows a cam that is always translating a cam sleeve for linear motion but does not react with the magnet but only compresses the spring. As such, claim 3 is believed allowable for this additional reason.

Claim 4 depends from claim 3 and is believed allowable for the same reasons set forth above.

Claim 5 is independent but like claim 1 also has the limitation that there is a shaft that carries a magnet that both rotates and translates with respect to the housing. The Peppard reference is missing this vital limitation. Peppard only offers a choice, you can have a translating magnet or a rotating magnet but not one that does both. As such, Claim 5 is believed allowable over the cited reference.

Claim 6 is independent but like claim 1 and 5 has a

limitation that the magnet both rotates and translates with respect to the housing. The Peppard reference is missing this vital limitation. Peppard only offers a choice, you can have a translating magnet or a rotating magnet but not one that does both. As such, Claim 6 is believed allowable over the cited reference.

Claim 7 is independent but like claim 1 also has the limitation that there is a shaft that carries a magnet that both rotates and translates with respect to the housing. The Peppard reference is missing this vital limitation. Peppard only offers a choice, you can have a translating magnet or a rotating magnet but not one that does both. As such, claim 7 is believed allowable over the cited reference.

The new claims have been added. Because they are dependent they are believed allowable for the above stated reasons. Furthermore, the Peppard reference does not disclose a coil spring that is both used in the torsion mode and the compression mode to provide two resistances in different directions. As such, new claims 11-14 are believed allowable.

As such, it is now believed that the case is in condition for allowance and early notification of such allowance is earnestly solicited.

It is believed that no fee is due with the submission at this time; however, if the Patent Office determines otherwise, it is hereby authorized and respectfully requested that it be charged to our Account No. 50-0852.

Respectfully submitted,

REISING ETHINGTON P.C.

A handwritten signature in dark ink, appearing to read "Steven L. Permut", is written over a horizontal line.

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